

In The Court of Commissioner, Saran Division, Chapra
Land Ceiling (Pre-emption) Rev. No. 224/2015
Chandeshwar Rai & ors.

Vrs.

Dineshwar Rai & ors.

ORDER

The instant revision petition is directed against the impugned order passed by Addl. Collector, Saran in Land Ceiling (pre-emption) Appeal No. 06/2015 on 30.07.2015.

The brief facts of the case are that the disputed piece of land measuring 5 katha 2 dhur, appertaining to khata No. 225, plot No. 1412 situated in Mouza, Muzauna, Circle-Dariyapur, Dist-Saran was transferred by respondent No. 1 through registered sale deed executed on 20.11.2013 in favour of respondents No. 2-6 after receiving the consideration money. Thereafter, the present petitioner Chandeshwar Rai S/o Khelari Rai and Most. Usha Devi W/o Jitendra Rai of the same village, claiming themselves to be co-sharer and adjoining raiyat of the vended land filed a pre-emption case bearing No. Land Ceiling case No. 06/2013-14 before DCLR, Sonpur for reconveyance of the said land. The learned DCLR after hearing the parties, finally vide order dt. 09.09.2014 rejected the pre-emption claim of the petitioner holding that the disputed land was preferred by gift deed much before the filing of pre-emption case and the pre-emptor also failed to brought on record any reliable evidence to prove that the respondents are not landless person. Feeling aggrieved by the said order the petitioner preferred an appeal case before Addl. Collector, Saran vide Land Ceiling (pre-emption) Appeal No. 06/2015. The learned Addl. Collector, Saran also vide order dt. 30.07.2015 confirmed the order dt. 09.09.2014 of DCLR, Sonpur and accordingly dismissed the appeal of the present petitioner.

On being aggrieved by and dissatisfied with the said order of Addl. Collector, Saran the petitioner has preferred the instant revision case before this Court.

Heard the learned counsel for the petitioner only as the learned J.C. to senior counsel for the respondents instead of forwarding oral submission agreed to submit written statements.

The learned counsel appearing on behalf of the petitioner at the very outset of his argument submitted that both the Courts below have committed gross error in finalizing the case as such the said order are fit to be set aside. He further submitted that the rules of Indian Evidence Act have been grossly violated by the authorities while deciding that the purchaser is a landless person. Regarding the nature of land he submitted that it has wrongly been held that the nature of land has been changed into residential land. The learned counsel further said that in order to defeat the pre-emption right of the petitioner, the respondent Vakil Rai transferred the land through gift in favour of his wife which is a sham, farzi and fabricated gift deed. He also argued that the respondents have obtained the photographs of the area only to prove that the nature of land has been changed into residential one but the learned authorities have failed to consider the point that the same is not a valid evidence to decide the nature of land. In fact authorities should have made local inspection to ascertain the real state of affairs at the spot. The learned counsel further argued that the disputed land is of agricultural nature and the same has been shown to be so in the sale deed document and the vendor being the full brother of the petitioner his claim of pre-emption can not be discarded on erroneous consideration. He also strongly submitted that the petitioner's name has been given as boundary raiyat in the sale deed document and he being full brother of the vendor, he is legally correct in claiming pre-emption right as per the clear provisions of section 16(3) of the Act. He further argued that both the Courts below wrongly taken into consideration the wrong pleas raised by the respondents. He

also submitted that since the findings of both the Courts below are based on non-existent grounds, the impugned order are not fit to be upheld rather a fresh consideration regarding the nature of land as well as landless status of the respondents are required to be verified done by authority. The learned counsel lastly prayed that this revision application is fit to be allowed.

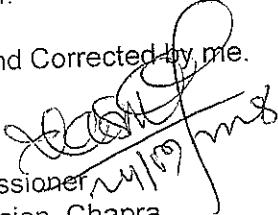
No W.S. has been filed by the respondent's counsel but for the sake of justice, the rejoinder/ objection petition filed earlier on behalf of respondent, which is on record, is taken into consideration. In the said objection petition it has been mentioned that the instant revision petition of the petitioner is legally not sustainable as the learned courts below have decided the issue taking into consideration all the relevant facts of the case properly. He also written that the nature of land has been changed and the same has become as residential nature as several houses including the house of petitioner is existing in the vicinity of disputed land. It is also mentioned that as the part of the disputed land has been transferred through gift and the purchaser is a landless person, no pre-emption is maintainable.

Considering the facts and circumstances of the case, material available on records, pleadings forwarded by the learned counsel for the petitioner and on perusal of the impugned order, it is seen that both the learned Courts below have rejected the pre-emption claim of the petitioner on the ground that the disputed land has changed its nature and since the land has been gifted much before the filing of pre-emption petition, no pre-emption claim can be allowed. In other words the changed nature of land, transfer of the disputed land through gift deed and landless status of the transferee have been given much credence in deciding the case. However, it is not in dispute that the petitioner is the adjoining raiyat and co-sharer of the vended land by virtue of he being the full brother of the transferor and thereby he also becomes co-sharer of the transferred property. Obviously these two ingredients are of utmost importance in deciding the pre-emption claim. But it is seen that the Courts below have failed to consider these points of the petitioner vis-a-vis the points raised by the respondents in his favour. It is also seen that the land has been shown to be of agricultural nature in the recital of the sale deed document but the respondents proved the same to be of dih-basgit on the basis of photograph, before the learned lower Courts. But as the said photographs have been taken as evidence to decide the nature of land in question the same can no way be taken as a conclusive evidence to decide the nature of land. It appears that both the lower Courts have taken a wrong approach by appreciating inconclusive material as evidence in deciding the nature of land, such findings of fact can not be held to be appropriate. Because no local inspection has been done by any authority to ascertain the actual position of the land and its nature, this Court finds that it is difficult to reads at a conclusion beyond reasonable doubts. In fact inspection of the land in question requires to be taken by the learned Court below i.e. by the learned DCLR, Sonpur to take a decision with respect to actual nature of land.

For the abovementioned reasons, the impugned order of learned Addl. Collector, is not sustainable and hence the same is set aside and case is remitted back to the DCLR, Sonpur for fresh consideration and for passing a fresh reasoned order in accordance with law after giving sufficient opportunities to the parties.

With the abovementioned observations and directions, this revision petition is disposed of.

Dictated and Corrected by me.


Commissioner
Saran Division, Chapra.


Commissioner
Saran Division, Chapra.